

STATE OF IOWA, ex rel., IOWA
DEPARTMENT OF NATURAL
RESOURCES (99AG23542),

VS.

Defendant.

PETITION AT LAW

455A.2.

4. Defendant Callaway Farms, Inc., is a Georgia corporation with its principal place of business at 869 Callaway Road, Rayle, Georgia 50126.

JURISDICTION

Water Pollution Control Regulations

5. The DNR is the agency of the state responsible for the prevention, abatement, or control of water pollution. Iowa Code § 455B.172(1). Rulemaking authority for establishing water quality and effluent standards is contained in Iowa Code section 455B.173(2). Rulemaking authority relating to disposal systems is contained in Iowa Code section 455B.173(3).

6. Iowa Code section 455B.186(1) prohibits the dumping, depositing, or discharging of pollutants into any water of the state except adequately treated sewage, industrial waste, or other waste pursuant to a permit issued by the DNR.

7. A “water of the state” means “any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.” Iowa Code § 455B.171(36). Tipton Creek and its tributary streams, watercourses, waterways and drainage systems are each a “water of the state” as defined in Iowa Code section 455B.171(36).

8. A “pollutant” means sewage, industrial waste, or other waste. Iowa Code § 455B.171(18). Hog manure is a “pollutant” as defined in Iowa as defined in Iowa Code section 455B.171(18).

9. Surface waters shall be free from floating debris, oil, grease, scum, and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance. 567 Iowa Admin. Code 61.3(2)“b.”

10. Surface waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to animal life. 567 Iowa Admin. Code 61.3(2)“d.”

11. A person who violates any provision of part 1 of division III of Iowa Code chapter 455B or any permit, rule, standard, or order issued under part 1 of division III of chapter 455B shall be subject to a civil penalty not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation. Iowa Code § 455B.191(2).

12. The Attorney General shall, at the request of the director with approval of the Environmental Protection Commission (EPC), institute any legal proceedings, including an action for an injunction or a temporary injunction, necessary to enforce the penalty provisions of part 1 of division III of chapter 455B or any rules promulgated or any provision of any permit, issued under part 1 of division III of chapter 455B. Iowa Code § 455B.191(5).

Animal Feeding Operation Regulations

13. Rulemaking authority relating to the construction and operation of animal feeding operations is contained in Iowa Code section 455B.173(13) and 459.103(1). 567 Iowa Admin. Code 65 contains rules relating to animal feeding operations.

14. A "release" is an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting, or land applying manure. 567 Iowa Admin. Code 65.1.

15. A confinement feeding operation shall not discharge manure directly into a water of the state or into a tile line that discharges into a water of the state. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

16. A confinement feeding operation shall retain all manure produced by the operation between periods of manure disposal. Iowa Code § 459.311(1); 567 Iowa Admin. Code 65.2(3).

17. Any person storing, handling, transporting, or land applying manure from an animal feeding operation who becomes aware of a release must notify the DNR as soon as possible, but not later than six (6) hours after the onset or discovery of the release. 567 Iowa Admin. Code 65.2(9).

18. The DNR and the attorney general shall enforce the provisions of this chapter in the same manner as provided in chapter 455B, division I. Iowa Code § 459.601(2)(a). The DNR and the attorney general may enforce the provisions of subchapter III in the same manner as provided in section 455B.175. Iowa Code § 601(2)(b).

19. A person who violates subchapter III of chapter 459 shall be subject to a civil penalty which shall be established, assessed and collected in the same manner as provided in section 455B.191. Iowa Code § 459.603.

FACTS

20. Callaway Farms, Inc., Eugene M. Callaway, Jr., and Blake W. Callaway, Sr., own and operate three (3) confinement feeding operations for swine in Hamilton County, Iowa. The three (3)

facilities, known as Callaway Farms A, B, and C total 13,200 finishing swine. The facilities all utilize shallow below building pits for manure storage which drain into two cell anaerobic lagoons. Callaway Farms Facility B has four (4) buildings housing 4,400 head of finishing swine and is located in NE¼ of the SE¼, Section 27, Township 88N, Range 23N in Hamilton County, Iowa. Callaway Farms Facility B is 600 feet northwest of the New York Branch of Tipton Creek.

21. On October 30, 1996, the DNR issued Administrative Order No. 96-WW-41 to Callaway Farms, Inc., a copy of which is attached, marked as Exhibit A and incorporated by reference. The Order arose from the land application of 3,439,950 gallons of manure by Callaway Farms, Inc. Manure from this land application reached a tile intake and entered a tributary of Tipton Creek killing over 46,000 fish. The Order provided that the defendant immediately and hereafter manage all facilities to prevent discharge of waste to waters of the State. The Order further assessed an administrative penalty of \$3,000.00. The defendant received a copy of the Order on November 4, 1996, as shown by the return receipt a copy of which is attached hereto as Exhibit B. The defendant did not appeal the Order. On December 26, 1996, the defendant paid the administrative penalty.

22. On September 8, 2009, DNR officials were contacted by Dr. Heiko Schoenfuss, a Biological Science Professor at St. Cloud State University. Dr. Schoenfuss indicated that he and a Research Hydrologist with the United States Geological Survey Bureau were conducting a water quality study on the New York Branch of Tipton Creek in Hamilton County on September 6, when they detected a strong manure odor in the stream. They observed numerous dead fish, brownish orange stained water, and a scum line three (3) inches above the current water level in the waterway. The Research Hydrologist accompanying Dr. Schoenfuss took pictures of the conditions in the stream.

23. On September 8, 2009, DNR officials began their investigation of the complaint on the New York Branch of Tipton Creek upstream of the Callaway Farms facilities. DNR officials observed no indication of a manure release, and field samples taken did not demonstrate elevated ammonia nitrogen levels in the stream.

24. DNR officials then proceeded downstream of the Callaway Farms facilities on the New York Branch of Tipton Creek. At the Ziegler Avenue Bridge crossing, DNR officials observed that the stream was discolored to a brown tint. Manure solids were observed for a 100 yard segment of the stream. A field sample indicated elevated levels of ammonia nitrogen. No fish alive or dead were observed.

25. DNR officials continued to examine various segments of the stream. At several locations, for example the County Road D41 bridge crossing, County Road S21 bridge crossing and the confluence of the South Fork Branch and New York Branch of Tipton Creek, DNR officials noted that the stream was discolored brown with a reddish pink hue. Field tests indicated elevated levels of ammonia nitrogen. Laboratory samples at the Ziegler Avenue crossing (14 mg/l) and County Road S21 crossing (100 mg/l) confirmed high levels of ammonia nitrogen in the stream. No fish alive or dead were observed.

26. On September 9, 2009, DNR officials contacted the farm manager for the three (3) Callaway Farms sites. The manager stated that he had begun flushing the shallow pits at the Callaway Farms Facility B on August 24, 2009, and forgot to remove the lagoon drain plugs. As a result, manure spilled out of the shallow pits and ran out of the building into a road ditch. The manager indicated that on August 27, 2009, he realized that the plugs were still in place and asked workers at the facility to

remove them. The manager further stated to DNR officials that if there were "water quality" problems in the stream, it had to have been caused by the manure release from the Callaway Farms Facility B.

27. DNR officials then inspected the Callaway Farms Facility B. DNR officials observed discolored vegetation and manure saturated soil in a flow path from a building at the facility to a road ditch. DNR officials followed the path of saturated soil and discolored vegetation through the road ditch to a tile intake. There was significant erosion around the intake, and approximately an 8 inch hole where the scour pit met the intake. DNR officials crossed the road and walked the road ditch until reaching the South Fork Branch of Tipton Creek. A tile outlet was dripping water. A field test of the water pooled under the tile outlet indicated elevated levels of ammonia nitrogen. DNR officials then returned to the Ziegler Avenue Crossing of the New York Branch of Tipton Creek. The stream was discolored and field tests again indicated elevated levels of ammonia nitrogen. No fish alive or dead were observed.

28. After inspecting Callaway Farms Facility B, DNR officials requested that Callaway Farms construct a dike to stop further contamination of the stream. The manager agreed, and on September 9, 2009, a dike was constructed at the intersection of Zublin Avenue and the New York Branch of Tipton Creek. Workers from Callaway Farms hauled water out of the stream. On September 11, 2009, DNR officials inspected the stream behind the dike at Zublin Avenue. The stream remained discolored and a field sample indicated elevated levels of ammonia nitrogen. On September 15, 2009, DNR officials last inspected the stream. At the County Road S21 and D Avenue crossings, field tests indicated elevated levels of ammonia nitrogen and the water appeared turbid.

VIOLATIONS

Water Pollution Control Violations

29. On August 24 through August 27, 2009, defendant discharged hog manure from Callaway Farms Facility B into the New York Branch of Tipton Creek in violation of Iowa Code sections 455B.186(1), 459.311(1) and Administrative Order No. 96-WW-41.

30. On August 24, 2009, through September 15, 2009, defendant caused exceedance of applicable water quality standards in violation of Iowa Admin. Code 61.3(2)“b” and “d.”

Animal Feeding Operation Violations

31. On August 24 through August 27, 2009, defendant failed to retain manure generated at their confinement feeding operation in violation of Iowa Code section 459.311(1) and 567 Iowa Admin. Code 65.2(3).

32. On August 24 through August 27, 2009, defendant failed to notify the DNR of a release of manure from their confinement feeding operation in violation of 567 Iowa Admin. Code 65.2(9).

PRAYER FOR RELIEF

WHEREFORE Plaintiff, State of Iowa ex rel., Iowa Department of Natural Resources requests that the Court:

a. assess a civil penalty against Defendant Callaway Farms, Inc., pursuant to Iowa Code sections 455B.191(2) and 459.603 for each day of violation of Iowa Code sections 455B.186(1), 459.311(1); 567 Iowa Admin. Code 61.3(2)“b,” 61.3(2)“d,” 65.2(3), 65.2(9); and Administrative Order No. 96-WW-41, not to exceed Five Thousand Dollars (\$5,000.00) for each day of such violation; and

b. issue a permanent injunction pursuant to Iowa Code sections 455B.191(5) and 459.601 enjoining Defendant Callaway Farms, Inc., from any violation of Iowa Code section 455B.186(1), 459.311(1); 567 Iowa Admin.Code 61.3(2)"b," 61.3(2)"d," 65.2(3), 65.2(9); and Administrative Order No. 96-WW-41.

Plaintiff further requests that the court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

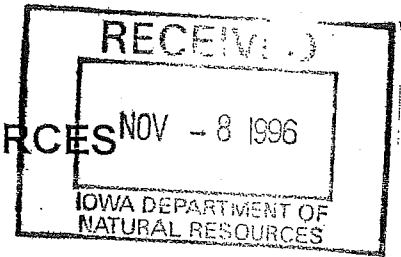
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E-mail: tbenton@ag.state.ia.us
ATTORNEYS FOR PLAINTIFF

IOWA DEPARTMENT OF NATURAL RESOURCES

ADMINISTRATIVE ORDER



IN THE MATTER OF:

CALLAWAY FARMS
Hamilton County, Iowa; and
MIDWEST LAGOON, INC.
Ireton, Iowa

ADMINISTRATIVE ORDER
NO. 96-WW- 41

TO: Eugene M. Callaway, Owner
Callaway Farms
R.R. #1, Box 76
Rayle, GA 30660

Blake Callaway, Manager
Callaway Farms
R.R. #1, Box 76
Rayle, GA 30660

Midwest Lagoon, Inc.
c/o Chuck Weiland, Reg. Agent
520 4th St. SW, P.O. Box 337
LeMars, IA 51031

Midwest Lagoon, Inc.
c/o Jay Vlotho, Officer
4736 Fig Avenue
Ireton, IA 51027

B6
10/31/96

I. SUMMARY

This Administrative Order requires you to cease the discharge of pollutants to waters of the state; and to pay to the Department a penalty of \$3,000.00, subject to your appeal rights stated in this Order. This is in addition to restitution for the dead fish in the amount of \$3,907.58 to the Fish and Wildlife Trust Fund of the Department, which is being demanded by separate communication.

Any questions regarding this order should be directed to:

Relating to technical requirements:

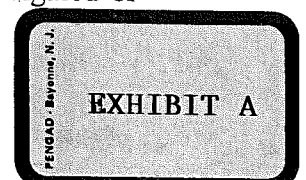
Curt Krieger
IDNR Field Office #2
2300 15th Street, SW
Mason City, Iowa 50401
Ph: 515/424-4073

Relating to appeal rights:

Michael Murphy
Iowa Department of Natural Resources
Henry A. Wallace Building
Des Moines, Iowa 50319-0034
Ph: 515/281-8973

II. JURISDICTION

This Administrative Order is issued pursuant to Iowa Code section 455B.175(1) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part 1, and the rules promulgated or



IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
CALLAWAY FARMS; MIDWEST LAGOON, INC.

permits issued pursuant thereto; and Iowa Code section 455B.109 and chapter 567--10(455B), Iowa Administrative Code (I.A.C.), which authorize the Director to assess administrative penalties.

III. STATEMENT OF FACTS

1. Eugene M. Callaway owns property located the NW 1/4, SW 1/4, Section 23, Rose Grove Tp., Hamilton County, Iowa. Operations include totally roofed enclosures in which swine are confined and fed and maintained for 45 days or more in any 12-month period [confined feeding operation, or "CFO"]. This facility is operated under the name Callaway Farm "C". Manure from the CFO is managed in a 2-cell anaerobic lagoon, for which Construction Permit No. CP-A91-37 was issued to Rayle Tech Farms in 1991. Neither Callaway Farms nor Rayle Tech Farms are registered with the Iowa Secretary of State as corporations doing business in Iowa.

2. Midwest Lagoon, Inc. is a corporation which contracts to apply animal manure to agricultural land, and contracted with Callaway Farms to dispose of manure stored at the above facility, in August, 1996. Between August 8-15, 1996, Midwest Lagoon applied 3,433,950 gallons of swine manure from the Callaway Farms operation by spray irrigation onto a field of standing corn on Callaway Farms property in Section 22, which is farmed by Wayne Newman. Midwest Lagoon was issued Administrative Order No. 93-WW-27 in 1993, citing the company for applying manure in a manner that allowed runoff into waters of the state, and directing that its activities be conducted in compliance with applicable requirements in the future.

3. On August 19, 1996, the Department investigated a complaint of pollution the previous day in Tipton Creek in Hamilton County, including a fish kill. Observations were made in Sec. 22, Rose Grove Tp., Hamilton County, based on a second complaint received that day. A drainage ditch next to the cornfield was observed. Water in the ditch at the upper (south) end was clear and showed no signs of contamination. Water near the north end of the field contained manure odors and a field test for ammonia nitrogen showed contamination higher than could be measured by the equipment. The ditch was walked, and two flowing tile outlets were observed. The water coming from the tile lines was obviously contaminated, one with high turbidity and odor, and the other causing a brown foam as it entered the ditch. Samples were taken upstream from the ditch contamination, at one of the tile outfalls, at a downstream location in the ditch, and at two downstream locations on Tipton Creek. Sample analyses showed the following:

LOCATION (Township/Sec.)	AMMONIA (mg/L)	CBOD (mg/L)
Drainage Ditch, Sec. 22, upstream	0.1	3
Drainage Ditch, Sec. 22, Tile outfall	100	230
Drainage Ditch, Sec. 22, Downstream	14	50
Gravel Bridge, Tipton Creek, Sec. 24	15	16

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
CALLAWAY FARMS; MIDWEST LAGOON, INC.

D-41 Bridge, Tipton Creek, Sec. 29

51

60

Observations were also made on Tipton Creek upstream of where this tributary entered it, and on New York Branch and one of its tributaries. The water was clear, with no signs of contamination. Other swine confinement operations in the vicinity were also observed on this date and on August 23, 1996, with no indication that they were an additional source of this contamination. Mr. Newman has indicated that there are tile intakes in the cornfield. It is concluded that the land application by Midwest Lagoon of swine wastes from the Callaway operation caused manure to enter tile intakes and discharge to the drainage ditch tributary and then to Tipton Creek, causing the pollution and fish kill on Tipton Creek.

4. A Department Fisheries Biologist evaluated the extent of the fish kill on August 19, 1996. Dead fish were observed for 6 2/3 miles downstream, totaling 46,315 fish with a value of \$3,907.58.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.186 prohibits the discharge of pollutants to waters of the state without a permit from this Department. The discharges of the wastes noted above violate this provision.

2. Iowa Code section 455B.173 (1995 Code Supp.) authorizes the Environmental Protection Commission to adopt rules relating to the operation of disposal systems and animal feeding operations, among other things. The Commission has done so at 567 IAC chapters 60-65. Chapter 65, in particular, relates to animal feeding operations.

3. This operation is a confinement feeding operation, as defined by rule 65.1. Rule 65.2 establishes minimum manure control requirements and guidelines. Subrule 65.2(3) provides that the minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. Subrule 65.2(10) provides that a person shall not apply manure by spray irrigation equipment, except as provided in the following paragraphs, which provide among other things that manure shall be applied by spray irrigation equipment from an animal feeding operation in a manner which will not cause surface water or groundwater pollution. The foregoing facts indicate violation of these rules.

4. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the water quality standards. The Commission has done so at 567--60-61, Iowa Administrative Code (IAC). Rule 61.2 establishes broad, protective policies for all waters of the state. Subrule 61.3(2) establishes narrative water quality criteria applicable to all surface waters of the state.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
CALLAWAY FARMS; MIDWEST LAGOON, INC.

Paragraph "c" of this subrule prohibits wastewater discharges that produce objectionable color, odor or other aesthetically objectionable conditions. Paragraph "d" of this subrule prohibits wastewater discharges that are acutely toxic to animal life. The discharge noted above violated the general water quality standards and protective policies of the Commission.

V. ORDER

THEREFORE, you are ordered to comply with the following provisions in order to cease and redress the above-cited violations:

1. Immediately and hereafter manage all facilities, including land application of manure to prevent discharge of wastes to waters of the State. Wastes shall be removed from control facilities and applied to land in a manner that will not cause surface or ground water pollution.
2. A penalty of \$3,000.00 is assessed effective 30 days from your receipt of this Order and shall be paid to the department within 60 days of receipt of this Order, unless you appeal this Order as provided in Part VII of this Order. This is in addition to restitution for the dead fish in the amount of \$3,907.58 to the Fish and Wildlife Trust Fund of the Department, which is being demanded by separate communication.

VI. PENALTY

1. Iowa Code sections 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. Criminal sanctions are also provided for discharge violations.
2. Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by rule a schedule of civil penalties up to \$10,000.00 which may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties; Chapter 567--10 of the Iowa Administrative Code (IAC). Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Administrative Order with a penalty. It is the Department's opinion that Midwest Lagoon is primarily responsible for payment of this penalty. However, it is not aware of the specific contractual arrangements between the parties, and they will have to determine between themselves who pays what portion, if this penalty is not appealed. The administrative penalty assessed by this order is determined as follows:
 - a. Economic Benefit. It appears that there was only minimal cost savings involved in this matter, by failure to adequately check for tile lines and observe nearby waterways. Therefore, no amount is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE ORDER
CALLAWAY FARMS; MIDWEST LAGOON, INC.

b. Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for the type of violation. As indicated above, substantial civil and criminal sanctions are authorized by statute. Despite the high penalties authorized, the department has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Maintaining compliance with water pollution control laws is a major program priority of the federal and state pollution control agencies. The discharges involved in this case resulted in significant water quality violations. Midwest Lagoon has received a prior Order. Based on these considerations, \$2,000.00 is assessed for this factor.


c. Culpability. The facts of this case demonstrate negligence. In light of prior problems and the high strength of these wastes, there is a high standard of care to monitor and manage these operations to avoid such problems. \$1,000.00 is assessed for this factor.

VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.175(1) and 561--7.5(1), Iowa Administrative Code (I.A.C.), as adopted by reference by chapter 567--7, I.A.C., a written Notice of Appeal to the Environmental Protection Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the department, and must identify the specific portion or portions of this order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and chapter 561--7, Iowa Administrative Code.

VIII. NONCOMPLIANCE

Future violations may result in the imposition of further administrative penalties or referral to the Attorney General to obtain appropriate relief pursuant to Iowa Code sections 455B.191.



HARRY J. WILSON, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 30th day of
OCT., 1996

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

MM/EB

BLAKE CALLAWAY MANAGER
CALLAWAY FARMS
RR #1 BOX 76
RAYLE GA 30660

I also wish to receive the following services for an extra fee:

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

4a. Article Number

PS34638671

4b. Service Type

- | | |
|---|---|
| <input type="checkbox"/> Registered | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail | <input type="checkbox"/> Insured |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD |

7. Date of Delivery

11/4/96

8. Addressee's Address (Only if requested and fee is paid)

9. Received By: (Print Name)

DAW

Signature: (Addressee or Agent)

Signature

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.